APPEAL NO. 010078

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 19, 2000. The hearing officer held that the respondent (claimant) sustained a compensable injury to his lumbar spine on _____, and that he had disability from that date to the date of the CCH.

The appellant (carrier) has appealed and highlights numerous inconsistencies in the evidence offered. There is no response from the claimant.

DECISION

Affirmed.

The claimant contended he slipped in a "split" position while at work on Thursday, _____. The claimant said he went in Saturday to pick up his paycheck, which was short due to a slow week, and had a conversation with his supervisor, Mr. L, about not getting a raise, which upset the claimant. The claimant said that on Monday, he asked Mr. L to send him to a doctor and was sent to Dr. T, a chiropractor. Dr. T took the claimant off work August 28, 2000.

A statement from a coworker and witness, Mr. H, said that he saw the claimant with his hands on the ground, without falling down, and that there was no water on the floor.

A referral doctor, Dr. TR, testified at the CCH and said he had first seen the claimant in early November and that the claimant was in extreme pain. He said that at that time the claimant had a resolving lumbar strain but his primary problem was a sacroiliac joint sprain and inflammation. Dr. TR said that this injury would be caused by twisting or falling with the legs split. He said he now understood that the claimant did not fall to the ground, although such had been his earlier understanding.

Mr. L testified and agreed that when the claimant approached him on Friday morning, the claimant told him that he had slipped the afternoon before. Mr. L said that the claimant told him he was fine, but needed a day off to get a massage and get "stretched out." Mr. L said that the area where the claimant said he slipped would not ordinarily have water, and that any water used in washing the area down would be "squeegeed out." Mr. L said that when the claimant came to pick up his paycheck on Saturday, he looked fine; when he asked for a raise, Mr. L suggested they discuss it later as there was family in his office. Mr. L said that on Monday morning the claimant told him he hurt.

A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). The hearing officer is

the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The hearing officer acknowledges some of the inconsistencies but found the generalities of the claimant's testimony credible and supported by Mr. L, as well as a statement from Mr. H. So, while such inconsistency from the claimant on details of the pivotal accident might lend itself to different inferences, the Appeals Panel does not find facts and second guess the evaluations by the hearing officer who observed the demeanor and testimony of witnesses and weighed the evidence in light of this. Likewise, she could credit the "off work" assessment and testimony of Dr. TR in finding that the claimant had disability resulting from this injury for the period under review. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge